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**D E C I S I O N**  
**of 17 November 2003**

**Case Number:** T 0186/03 - 3.5.3

**Application Number:** 00300375.3

**Publication Number:** 1026872

**IPC:** H04M 7/00

**Language of the proceedings:** EN

**Title of invention:**

Dynamically configurable system and method for transcoding streaming data and telecommunications infrastructure incorporating the same

**Applicant:**

LUCENT TECHNOLOGIES INC.

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 108

EPC R. 65(1), 84a

**Keyword:**

"Missing statement of Grounds"

"Reimbursement of appeal fee (no)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0186/03 - 3.5.3

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.3  
of 17 November 2003

**Appellant:** LUCENT TECHNOLOGIES INC.  
600 Mountain Avenue  
Murray Hill, New Jersey 07974-0636 (US)

**Representative:** Williams, David John  
Page White & Farrer  
54 Doughty Street  
London WC1N 2LS (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 15 October 2002  
refusing European patent application  
No. 00300375.3 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** A. S. Clelland  
**Members:** F. van der Voort  
R. Menapace

## Summary of Facts and Submissions

- I. The appeal contests the decision of the Examining Division of the European Patent Office refusing the European patent application No. 00 300 375.3. The decision was dispatched by registered letter with advice of delivery on 15 October 2002. The applicant filed a notice of appeal by letter received on 13 December 2002 and paid the fee for appeal on the same date. No statement of grounds was received. The notice of appeal contains nothing that could be regarded as a statement of grounds pursuant to Article 108 EPC.
- II. In a letter dated 22 January 2003 the appellant informed the Board that "the Applicant has decided not to continue further with an Appeal in respect of this application, and therefore Substantive Grounds of Appeal will not be filed". In addition, the appellant requested a refund of the appeal fee.
- III. By a communication dated 25 April 2003 and sent by registered post with advice of delivery, the Registrar of the Board informed the appellant that no statement of grounds has been filed and that the appeal could be expected to be rejected as inadmissible.
- The appellant's attention was drawn to the provision concerning the late receipt of documents pursuant to Rule 84a EPC and to the possibility of filing a request for re-establishment of rights under Article 122 EPC. The appellant was invited to file observations within two months.

- IV. No answer was received within the given time limit to the Registry's communication.

### **Reasons for the Decision**

1. As no written statement setting out the grounds of appeal has been filed within the time limit provided by Article 108 EPC in conjunction with Rule 78(2) EPC, the appeal has to be rejected as inadmissible (Rule 65(1) EPC). Rule 84a EPC is no longer applicable.
2. A reimbursement of the appeal fee is ordered by a Board of Appeal:
  - (i) in a case in which no notice of appeal has been filed within the time limit under Article 108 EPC, first sentence, or no notice of appeal is deemed to have been filed because of a failure to pay the appeal fee within the same time limit and, consequently, an appeal did not come into existence and, hence, the appeal fee was paid without reason; or
  - (ii) where the Board deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation (cf. Rule 67 EPC).
3. In the present case, a notice of appeal was filed and the appeal fee was paid within the time limit under Article 108 EPC, first sentence. Consequently, the appeal is deemed to have been filed so that a reimbursement of the appeal fee according to point (i) does not apply.

4. Furthermore, since the appeal is rejected as inadmissible, a decision on its allowability could not be given by the Board, so that a reimbursement of the appeal fee under point (ii) does not apply either.

**Order**

**For these reasons it is decided that:**

1. The appeal is rejected as inadmissible.
2. The request to refund the appeal fee is refused.

The Registrar:

The Chairman:

D. Magliano

A. S. Clelland